U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 15 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a software engineer with The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, two witness letters, and other exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 18, 2012. In an accompanying statement, counsel called the petitioner "an internationally acclaimed researcher with unsurpassed expertise in the nationally crucial field of Information Technology. . . . He has a remarkable history of exceptional results that have had a significant influence on his field."

In a personal statement accompanying the petition, the petitioner described his duties at [redacted] where he has worked since 2005. The petitioner stated that he works with clients such as Health Net (a managed health care company), and that many of these clients rely on legacy systems (obsolete software) that are expensive to maintain but difficult to replace.

The petitioner noted that he had written a small number of technical articles, but all these articles date from his time as a student at the only one of them appeared after 2001. There is no indication that his work at involves the publication of new scholarly work.

India, stated:

> [The petitioner] currently holds a position of Senior Associate – Projects in We have worked on multiple projects together. He is one of the most active and important members I have worked with in a team and his hard work ethic has impressed me very much. . . .
>
> [The petitioner] has been working on system design for high availability and web technologies for more than 9 years. One of his specializations is to build reliable systems by developing efficient and scalable computers and these mainly include legacy systems . . . [that are] expensive to maintain. . . . He worked on many migration projects that required porting of data and programs to newer technologies, which were easier to maintain.

described two projects that the petitioner completed. For , a company that handles data for the petitioner "made a significant contribution in building the important application 'Consolidated Eligibility System' . . . which is responsible for accurate and timely reporting of eligibility information for all customers of " For the retail chain, the petitioner "was responsible for the synchronizing [of] different layers of legacy systems" in a project that took place "during the holiday season sales [when] a system outage of a day could cause heavy losses."

a validation engineer at met the petitioner at a 2005 conference. described various projects that the petitioner undertook, for example:

> He proposed a developed for retail companies that would reduce the round trip time of manufacturing to delivery and also address security concerns of similar softwares that were available in the business. Noticeably, he proposed a multi-level access control framework for the application. This model was clearly a breakthrough to the traditional information assurance area as it introduced multiple-level role based access control into the application, which could further prevent network intruders and protect sensitive information more effectively.

Witnesses from offered letters as well, praising the petitioner's work in varying degrees of detail. contract negotiations manager in stated that the petitioner "served a critical role in identifying testing needs for system compatibility with both receiving and transmitting required data."

The petitioner also submitted letters indicating that he had provided various services, such as creating web sites, to various local organizations such as the The letters indicate that the petitioner pursued these projects as volunteer efforts outside of his employment, and there is no evidence that this work was significant outside of the organizations themselves. While commendable, these volunteer efforts are not the foundation for employment-based immigration benefits.

On May 15, 2012, the director issued a request for evidence. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner had not established a level of impact on the field that would merit the national interest waiver. The director instructed the petitioner to submit documentary evidence of his influence on the field.

In response, counsel listed the petitioner's "achievements in the field of Information Technology research," for example:

1. [The petitioner] conducted a study and presented a paper on suggestions for improving Wireless Application Protocol ("WAP"). . . . He also recommended this concept in vehicles and information systems using the technologies HTML, Java and WAP, **which is currently in practice.**
2. [The petitioner] worked on developing efficient and scalable computers, which mainly include legacy systems. . . . The component-based migration **greatly reduced** the efforts in integrating the new components and enabled the sharing and reusing of the existing components, which is being used by U.S. companies to dramatically reduce the transition cost. In addition, this design makes systems reliable and easier to maintain.
3. [The petitioner] build a ("CES") for [The petitioner] **is the first to have successfully** designed this information system which is responsible for accurate and timely reporting of eligibility information for all customers of

(Counsel's emphasis.) Counsel used terms such as "landmark" and "breakthrough" to describe projects that the petitioner undertook for clients such as The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, it is important to see what sort of evidence the petitioner has submitted to support counsel's claims.

Under the heading "Evidence of [the petitioner's] leading role," the petitioner submitted a copy of an electronic mail message from a project manager at indicating that the petitioner's "expertise and professionalism were key to the success of this project." The record does not establish the greater significance of the project.

As evidence of the petitioner's "publications," the petitioner submitted several documents relating to his work for [redacted]. The materials consist of a [redacted] "project presentation," which appears to consist of printouts from an electronic slide presentation; several documents relating to the "V-Enquire" project at [redacted]; "COSMOS Application Re-engineering Project Solution Approach." The [redacted] materials date from early 2002 when the petitioner was a graduate student. The petitioner submitted no evidence that any of these materials are "publications" in the usual sense of the word. They appear, instead, to have been prepared for internal distribution to specific clients.

The petitioner submitted additional witness letters from [redacted] senior software engineer at [redacted] who "worked in the technical support departments for companies such as [redacted]; and [redacted] employed "in sales and marketing at [redacted]. The letters include passages that closely resemble one another and prior submissions such as counsel's introductory statement. For instance, the letters from [redacted] both contain the following passage:

> As I will describe in this letter, [the petitioner] is a gifted researcher with unique and extraordinary skills in the field of information technology with a focus on building reliable systems by developing efficient and scalable computers and these mainly include legacy systems. His achievements are genuinely outstanding and granting the requested waiver and permanent resident status will positively influence the United States.

[redacted] stated that the petitioner "is a truly outstanding Software Professional with unique skills and extraordinary abilities in the field of Legacy Systems & Web Technology and he has had a significant impact on the field at a very early stage in his career." [redacted] letter includes the same sentence, with the same arbitrary capitalization of "Software Professional" and "Legacy Systems & Web Technology." [redacted] offered a very similar statement, when he stated that the petitioner "is a truly outstanding Software Professional with unique skills and extraordinary abilities in the field of Information Technology." The similar language implies common authorship. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). With respect to the likely identity of the common source, the AAO notes that counsel, throughout this proceeding, has arbitrarily capitalized the petitioner's field and occupation.

The director denied the petition on October 9, 2012. Regarding the petitioner's work, the director stated: "The improvements have helped several companies maintain better records and improve their workflow. However, the evidence is vague on how the petitioner's work has made an impact on the field as a whole." The director concluded that the impact of the petitioner's work has been "more localized than on a national level."

On appeal, counsel observes that, in the denial notice, the director erroneously referred to the petitioner as a "physician," and elsewhere stated that the petitioner's work involved "downhole telemetry." The AAO acknowledges that these references were in error, likely copied from earlier decisions. Nevertheless, the remainder of the decision correctly refers to the petitioner's real occupation, and specifically identifies several of the petitioner's evidentiary exhibits. These stray errors were not foundational to the director's decision, and do not invalidate the rest of the decision or prejudice its outcome. Furthermore, the "physician" reference was in the context of whether or not the petitioner had performed "leading or critical roles" as the petitioner had claimed. The phrase "leading or critical roles" derives from the USCIS regulation at 8 C.F.R. § 204.5(h)(3)(viii), which relates to a different immigrant classification, alien of extraordinary ability, under section 203(b)(1)(A) of the Act. The petitioner does not seek that classification in this proceeding, and therefore evidence of a "leading or critical role" would not have established eligibility for the classification he now seeks.

Counsel asserts: "The Petitioner is in the field of Information Technology, which due to the nature of the field, is very difficult to quantify in terms of achievement as opposed to other fields such as biology or medicine." (This sentence appears twice in the appellate brief, on pages 3 and 8.) The petitioner has not shown that his achievements, by nature, are difficult to document with objective evidence, such that the petitioner can rely only on witness letters. Witnesses have used terms such as "breakthrough" and "model" to describe the significance and lasting influence of the petitioner's work. The significance of the petitioner's efforts would not be self-evident in a vacuum; there must be some context to allow meaningful comparison between the petitioner's work and that of others, or to show significant improvement in system performance resulting from those efforts. The petitioner has not shown that such comparisons defy objective quantification. Counsel states, for instance, that one of the petitioner's systems "is being used by U.S. companies to dramatically reduce the transition cost." Costs, by definition, are quantifiable. To determine the significance of the cost reduction, the petitioner could document the original costs; the cost savings through the petitioner's work; and the lesser cost savings resulting from the work of his peers. The petitioner's refusal or inability to provide those figures does not make his work intrinsically "difficult to quantify." If the figures are unavailable to the petitioner and his witnesses, then there is no realistic basis to conclude that the petitioner's work results in greater cost savings than that of his colleagues.

A basic element of the petitioner's occupation is the maintenance and upgrading of computer systems. Success at that task is a sign of professional competence, but does not imply eligibility for the national interest waiver. It cannot suffice for the petitioner (either directly, through counsel or through witnesses) simply to list or describe his various projects and declare them to be "original, ground breaking and of great significance to the field" as counsel asserts on appeal.

Counsel claims that the director did not give sufficient weight to "independent evaluations" from individuals who "have never worked with the Petitioner or know him personally." As noted above, the letters contain similar or identical language, indicating that the letters were not prepared independently. Even then, the letters did not establish the petitioner's influence in the field. At best, they described individual projects and then declared them to be widely influential.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). For reasons discussed above, the letters that contain the most emphatic claims regarding the petitioner's impact and influence are also of questionable origin, and they lack objective documentary support.

Two new witness letters accompany the appeal, both from individuals who, like the petitioner, graduated from the [redacted] business intelligence analyst/ developer at [redacted] describes some of the petitioner's past projects in technical detail. The witness states:

> I have had no prior experience working with [the petitioner]. The basis for this letter is my independent knowledge of his accomplishments and familiarity with his background based on the documentation that he provided me. Therefore, I write this letter in the capacity of an independent authority.

Much of the text of the letter is copied, word for word (including grammatical errors), from two earlier letters provided by [redacted] including the following passage that uses first-person pronouns to describe past work with the petitioner. For example, the new letter on appeal contains the following paragraph on page 2:

> [The petitioner] keeps himself abreast with cutting technology by attending online conferences web seminars [*sic*]. He is an IBM DB2 Certified Professional and has received training in Healthcare domain. He is skilled in working on COBOL, JCL, DB2 and VSAM and its tools like Endevor, File-Aid and MVS. He has received awards such as the [redacted] for project and research contribution to health care domain. But using this technology for [redacted] is just

> one facet of him. [The petitioner] was able to quickly assess the client's system capabilities and particular needs during this tenure. He took the time to carefully consider our business, philosophy and operating style, tailoring his approach to match our culture so as not to disrupt the group. He was able to develop a clear and insightful view into our current situation, accurately evaluate areas in need of improvement and identify the processes that required strengthening.

The first five sentences of the above paragraph appeared on the last page of [redacted] first letter (and in several other letters in the record). The remaining three sentences appeared on page 2 of his second letter, submitted in response to the request for evidence. The passages appear to have been joined at random, with the reference to "this tenure" dissociated from its original context (referring to a project for [redacted]. There are similarities to other letters as well. For instance, the penultimate paragraph of the letter begins with two sentences that also appeared on the second and third pages of [redacted] s letter.

The final letter is from [redacted] a senior developer at [redacted] The second paragraph of the letter includes this passage: "The basis for this letter is my independent knowledge of [the petitioner's] accomplishments and familiarity with his background based on the documentation that he provided me. Therefore, I write this letter in the capacity of an independent authority" (emphasis in original). An almost identical passage appears in [redacted] letter, which the AAO has shown to contain substantial language from earlier letters. The fourth paragraph of [redacted] letter (beginning with "Even at an early stage of his career . . .") is identical to the third paragraph on page 2 of [redacted] letter (which also incorporates shared language from still other letters).

The claim that the two new witnesses wrote their letters independently is demonstrably false. The appeal continues a previously established pattern of different witnesses including the exact same, or very similar, languages in their letters. The new letters' undeniable assembly from parts of earlier letters demolishes their credibility as supposedly independent testimonials, purportedly derived from the witnesses' own personal knowledge. Given this pervasive pattern, the AAO has no reason to presume that the credibility issues are limited to the specific similarities that it has identified. The AAO will not survey each letter, sentence by sentence, isolate the copied language, and assume that everything that remains is wholly credible. Rather, the issue casts a shadow on all of the witness letters. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In the absence of objective, documentary evidence of the importance and impact of his work, the petitioner has relied predominantly on witness letters. The record contains other exhibits, but the significance of those exhibits is not self-evident or self-explanatory. The petitioner instead relies on witness letters. As those letters have proven to be unreliable, the waiver claim rests on no solid foundation whatsoever.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.